



**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CURTIS PICKERING,  
Plaintiff,  
vs.  
U.S. GOVERNMENT, et al.,  
Defendant(s).

3:08-CV-0218-ECR (VPC)

## **REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE**

May 12, 2008

This Report and Recommendation is made to the Honorable Edward C. Reed, Jr., United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B). Before this court is plaintiff's application to proceed *in forma pauperis* and *pro se* complaint (#3). As set forth below, it is recommended that plaintiff's application to proceed *in forma pauperis* be denied and his complaint be dismissed with prejudice.

Applications to proceed *in forma pauperis* are governed by 28 U.S.C. § 1915, which provides that “the court shall dismiss the case at any time if the court determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9<sup>th</sup> Cir. 2000). Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9<sup>th</sup> Cir. 1999). In making this determination, the court takes as true all allegations of material fact stated in the complaint, and the

1 court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74  
 2 F.3d 955, 957 (9<sup>th</sup> Cir. 1996).

3 The complaint must be dismissed *sua sponte* if it is in fact frivolous – that is, if the claims  
 4 lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that  
 5 are untenable (*e.g.* claims against defendants who are immune from suit or claims of infringement  
 6 of a legal interest which clearly does not exist), as well as claims based upon fanciful factual  
 7 allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28  
 8 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9<sup>th</sup> Cir. 1991).

9 The caption of plaintiff's complaint lists the defendants as the U.S. Government, the Treasury  
 10 Secretary, the U.S. Postal Service, and the U.S. Secretary of State. The body of plaintiff's complaint  
 11 is largely unintelligible; however, plaintiff states that his case is "due to fraud at the Federal level  
 12 funding offered to me as a House aid under the Honorable House Speaker Dennis Hastert, the  
 13 Honorable House Speaker Barbara Palosi [sic] authorized via President Bush" (#3-2). The court  
 14 concludes that plaintiff's claims are based on conclusions that are untenable, fantastical, or  
 15 delusional scenarios. This court concludes that plaintiff's legal theories are indisputably meritless.  
 16 Accordingly, the court concludes that plaintiff's complaint is frivolous under 28 U.S.C. §  
 17 1915(e)(2)(B)(i). Therefore, it is recommended that plaintiff's complaint be dismissed with  
 18 prejudice.

19 The parties are advised:

20 1. Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice, the  
 21 parties may file specific written objections to this report and recommendation within ten days of  
 22 receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
 23 Recommendation" and should be accompanied by points and authorities for consideration by the  
 24 District Court.

25 2. This report and recommendation is not an appealable order and any notice of appeal  
 26 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

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### **III. RECOMMENDATION**

**IT IS THEREFORE RECOMMENDED** that the district court enter an order as follows:

1. **DENYING** plaintiff's motion to proceed *in forma pauperis* (#3); and
  2. **DISMISSING** plaintiff's complaint **WITH PREJUDICE**.

6 DATED: May 12, 2008.

  
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**Valerie G. Poole**  
UNITED STATES MAGISTRATE JUDGE